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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

SAGE FINANCIAL PROPERTIES, LLC,)	
and HORIZON PROPERTIES, INC.,)	No. _____
)	
Plaintiffs,)	PETITION AND NOTICE
)	OF REMOVAL
v.)	
)	
FIREMAN'S FUND INSURANCE)	
COMPANY,)	
)	
Defendant.)	

TO: Plaintiffs Sage Financial Properties, LLC and Horizon Properties, Inc.
c/o Gerry P. Fagan and Adam J. Tunning
Moulton Bellingham, P.C.
27 North 27th Street, Suite 1900
Billings, Montana 59103-2559

Montana Seventh Judicial District Court
300 12th Avenue N.W.
Sidney, Montana 59270

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332 and 1446, Defendant Fireman's Fund Insurance Company, by and through its undersigned counsel, hereby files this Notice of Removal to remove this civil action from the Montana Seventh Judicial District Court, Richland County where it is currently pending as Cause No. DV-19-27 to the United States District Court for the District of Montana, Billings Division.

BACKGROUND

On February 28, 2019, an action was commenced in the Montana Seventh Judicial District Court, Richland County, entitled *Sage Financial Properties, LLC and Horizon Properties, Inc. v. Fireman's Fund Insurance Company*, as Cause No. DV-19-27. On March 15, 2019, Fireman's Fund Insurance Company received notice of the Summons and Complaint by process server in the aforementioned action. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint are attached hereto as **Exhibits 1 and 2**. A copy of the Service of Process is attached hereto as **Exhibit 3**.

Plaintiffs assert in their Complaint two causes of action under theories of Breach of Contract and violation of the Montana Unfair Trade Practices Act. Plaintiffs' claims are premised upon policies of insurance that each Plaintiff

maintained with Defendant; each policy had effective dates of June 14, 2014 to June 14, 2016. Plaintiffs reported losses to Defendant as a result of a June 30, 2015 hail storm. Defendant timely responded to, investigated, and provided all available and appropriate coverage for those claims.

Plaintiffs participated in Defendant's investigation of their claims, agreed to the determination on the extent of damage resulting from the storm, agreed to the scope of repairs, and accepted coverage and payment of repairs for the same. Plaintiffs then notified Defendant of new damages in 2017, to which Defendant promptly responded and appropriately denied coverage. This action is based on Plaintiffs' allegations that they discovered in the Spring of 2017 *additional* losses caused by the 2015 storm and Defendant's denial of coverage for the same.

GROUND FOR REMOVAL

This Court has original jurisdiction over this action under 28 U.S.C. § 1332 on the grounds that complete diversity exists between Plaintiffs and Defendant and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Venue is proper in the Billings Division as this Division includes Richland County under Rule 1.2(c)(4) of the Local Rules of Procedure of the United States District for the District of Montana. This is a claim for breach of contract and a violation of the Unfair Trade Practices Act. If, as here, the

Defendant is a foreign entity and does not reside in Montana, venue for breach of contract is proper in “the county in which the contract was to be performed.”

Mont. Code Ann. §25-2-118(2) and §25-2-121(1)(b). Venue for a tort action is “the county where the tort was committed” or “the county in which the plaintiff(s) resides.” Mont. Code Ann. §§ 25-2-118(2); 25-2-122(3).

I. The Amount in Controversy Exceeds \$75,000.00.

In general, a defendant may remove to federal court any civil action brought in state court where the parties are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(a)(1), 1441(a).

Plaintiffs’ Complaint seeks an award of damages in an amount “to be determined at trial.” Specifically, Plaintiffs allege they have incurred damages in the amounts of \$11,559.79, “over \$60,000”, and “significant interior damages to the premises as the 2018-2019 winter approached.” In addition, Plaintiffs’ Complaint seeks an award of punitive damages. Although Plaintiffs’ Complaint does not state a definitive amount of damages, it requests undetermined property damage, compensatory damages, and attorney fees and costs.

The amount in controversy is well over the jurisdictional amount of \$75,000.00. Therefore, this matter may properly be removed to this Court.

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II. Complete Diversity of Citizenship Exists between Plaintiffs and Defendant.

Plaintiff Sage Financial Properties, LLC is a Montana limited liability company with its principal place of business located in the State of Montana. Plaintiff Horizon Properties, Inc. is a Montana corporation with its principal place of business located in the State of Montana. Defendant Fireman's Fund Insurance Company is a California corporation with its principal place of business located in Chicago, Illinois. Accordingly, complete diversity exists and this Court has jurisdiction pursuant to 28 U.S.C. § 1332(a) because Plaintiffs and Defendant are citizens of different states.

III. Defendant's Notice of Removal is Timely.

This Notice of Removal is timely. 28 USC § 1446(b) requires a Notice of Removal to be filed "within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based." Defendant received notice of the Summons and Complaint on March 15, 2019. Accordingly, Defendant's receipt of the initial pleadings is within 30 days of filing this Notice of Removal.

WHEREFORE, Defendant Fireman's Fund Insurance Company accordingly requests that the above-entitled action be removed from the Montana Seventh Judicial District Court, Richland County where it is currently pending as

Case No. DV-19-27 to the United States District Court for the District of Montana,
Billings Division.

Dated this 4th day of April, 2019.

BY: /s/ Jean E. Faure
Jean E. Faure
FAURE HOLDEN ATTORNEYS AT LAW, P.C.
Attorneys for Defendant Fireman's Fund Insurance
Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of April, 2019, I electronically
filed the foregoing document, with the U.S. District Court, and served the same by
United States Mail on counsel of record listed below.

Gerry P. Fagan
Adam J. Tunning
Moulton Bellingham PC
P.O. Box 2559
Billings, MT 59103-2559

BY: /s/ Jean E. Faure
Jean E. Faure
FAURE HOLDEN ATTORNEYS AT LAW, P.C.
Attorneys for Defendant Fireman's Fund Insurance
Company